

SAAL-PA

MEMORANDUM FOR PRINCIPAL ASSISTANTS RESPONSIBLE FOR CONTRACTING

SUBJECT: 2Q2000 Quarterly Bid Protest Analysis Reports

The quarterly reports for GAO and interagency level protests for the period January 1 through March 31, 2000 (2Q00) is provided in accordance with AFARS 33.190. Additional information related to a GAO protest decision noted on the lessons learned portion of this report can be obtained on GAO's web site [http://www.access.gpo.gov/su\\_docs/aces/aces170.shtml](http://www.access.gpo.gov/su_docs/aces/aces170.shtml). GAO does not provide a decision on GAO protests that are dismissed or are academic. The interagency's level protest reports are not posted on a web site.

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**QUARTERLY REPORT FOR GAO PROTESTS  
FOR THE PERIOD JANUARY 1 THROUGH MARCH 31, 1999 (2Q00)**

1. Number of protests filed:

	<b>2Q00</b>	<b>1Q00</b>	<b>2Q99</b>
<b>TOTAL</b>	<b>53</b>	<b>65</b>	<b>48</b>
o AMC	14	21	14
o USACE	19	21	18
o DA Other	20	23	16

Please refer to listing of protests by MACOM at end of this report.

2. Number of protests sustained/granted:

	<b>2Q00</b>	<b>1Q00</b>	<b>2Q99</b>
<b>TOTAL</b>	<b>3</b>	<b>4</b>	<b>1</b>
o AMC	1	0	0
o USACE	2	1	1
o DA Other	0	3	0

3. Costs:

a. Costs and fees awarded by GAO to protester:

	<b>2Q00</b>	<b>1Q00</b>	<b>2Q99</b>
<b>TOTAL</b>	<b>\$63,105</b>	<b>\$0</b>	<b>\$0</b>
o AMC	\$30,083	\$0	\$0
o USACE	\$0	\$0	\$0
o DA Other	\$33,022	\$0	\$0

b. Estimated preaward value of requirement or postaward contract cost/price:

(1) Preaward protests (estimated value of requirement):

	2Q00	1Q00	2Q99
<b>TOTAL</b>	<b>\$126,158,532</b>	<b>\$27,967,852</b>	<b>\$159,396,419</b>
o AMC	\$0	\$20,080,000	\$34,100,000
o USACE	\$32,572,000	\$4,647,002	\$95,844,717
o DA Other	\$93,586,532	\$3,240,850	\$29,451,702

(2) Postaward protests (contract cost/price):

	2Q00	1Q00	2Q99
<b>TOTAL</b>	<b>\$1,504,180,122</b>	<b>\$329,681,134</b>	<b>\$544,134,778</b>
o AMC	\$1,366,957,356	\$145,728,067	\$519,140,729
o USACE	\$47,079,533	\$176,883,254	\$115,821
o DA Other	\$90,143,233	\$7,069,813	\$24,878,228

c. Total government personnel costs resulting from protests:

	2Q00	1Q00	2Q99
<b>TOTAL</b>	<b>\$309,004</b>	<b>\$291,627</b>	<b>\$228,437</b>
o AMC	\$145,966	\$133,545	\$162,042
o USACE	\$130,773	\$101,413	\$46,221
o DA Other	\$32,265	\$56,669	\$20,174

4. Lessons learned, issues and trends:

#### AMC Lessons Learned:

##### a. Safety Storage, Inc., B-283931, Withdrawn.

This was a protest of an order placed under an optional federal supply schedule. The protest was filed by a company that had been contacted by the using activity for information but was not solicited for a quote by the contracting office. The purchasing agent contacted three companies on GSA Advantage as required by the regulations. The protest could have been avoided by the purchasing agent requesting a quote from the company that had submitted information, not just the minimum required for regulatory compliance.

##### b. Parmatic Filter Corp., B-284284 and, Withdrawn.

Post protest discussions with Parmatic and Parmatic;s counsel relative to the merits of the protest prove beneficial. Parmatic ultimately withdrew its protest as a result of discussions and began to pursue ways to improve relations on future buys.

**c. Olin Corporation, B-283401.1 and B-283401.2, Denied.**

On November 16, 1999, the GAO denied Olin Corporation's protest of IOC's award to Alliant Techsystems, Inc., for a fixed-price requirements contract for small caliber ammunition and for the use of facilities at Lake City Army Ammunition Plant. The award was made after a two-step full and open competition, in which three potential sources submitted final offers. Olin alleged that the initial second-phase evaluation of technical capability improperly failed to identify the qualitative difference among the proposals, and consequently the SSEB evaluation steered the SSA toward the selection of the lowest price, technically acceptable proposal, rather than the stated best value analysis. Olin further alleged that when the SSAC did attempt to present the SSA with discriminators the SSA unreasonably and improperly ignored the information presented to him, which resulted in Alliant receiving the award despite the technical superiority of Olin's proposal. The GAO found that the SSA considered the major discriminators favoring selection of Olin and reasonably determined that they did not justify the almost \$200 million price premium associated with its proposal.

The GAO's decision did reflect that the evaluation process itself could have been stronger in at least three ways:

First, although the facts clearly illustrated that the SSA ultimately was apprised of all true discriminators between the technical proposals, the GAO did point out that the solicitation provided no precise guidance on how offers should respond to the technical criteria, or what information they should submit. The contracting officer had promised a future comparative assessment," but never issued a written modification to the RFP to provide for the consideration of additional factors of additional factors under technical capability. The GAO found this shortcoming to be immaterial, since the SSEB and SSAC did ultimately identify the qualitative differences between proposals, and the record made clear that the SSA was provided a clear understanding of differences among the proposal.

Second, the SSAC attempted to identify "hidden costs" in Alliant's proposal by projecting out the cost of processing ECP's, RFD's, and requests for waiver. The GAO pointed out that the SSA rightly concluded that these projections should have no weight in this decision, since these "costs" were not identified as part of the evaluation criteria and were reasonably viewed by the SSA as speculative.

Third, the GAO noted that the SSAC identified several advantages for Olin, which the SSA properly did not consider since they were not covered by the evaluation scheme. These included commitment to the facility, readiness, transition risks, narrowing of the mobilization base, and flexibility. The GAO specifically noted that the solicitation could have included the cost and effects of transition as a consideration in the evaluation, but since it did not, the SSA properly did not consider it.

Finally, there was a breakdown in the structure of the SSEB and SSAC such that they ultimately functioned as one group, rather than as a "check and balance" as they are ideally intended. Thus, the SSEB did not act independently of the SSAC, and the SSAC did not serve as a "check" on the SSEB. Our experience highlighted the need to exercise more care in the selection of the individuals serving in these capacities to ensure that they act independently of one another.

**d. Combined Systems, Inc., B-284457, Withdrawn.**

Communications between the contracting representative and the offerors can avoid a protest. The procurement in question was an urgent requirement for ten thousand 40 mm Multiple Ball Rounds and ten thousand 40 mm Foam Baton Rounds. The initial statement of work requested an option for additional cartridges to be exercised over a five-year period. The option was subsequently deleted.

During the period between the solicitation synopsis and the publication of the award in the Commerce Business Daily the failure to communicate the essential terms of the procurement resulted in a protest. The protester alleged that the contracting representative supplied him with verbal information including potential option quantities and that he submitted his offer/proposal based on this information. His

submission contained prices for significantly larger option quantities for each item. The protester alleges that follow up attempts to contact Government personnel were unsuccessful except on one occasion when the protester was informed that his offer/proposal was being evaluated.

Following the filing of the protest, a telephonic conference was held between the parties legal representatives and the General Accounting Office attorney. During that conference it became clear that the protest was filed because the protester believed the solicitation contained options. Had the protester known there were not options he would not have protested. Failure to communicate this fact resulted in the filing of the protest and the expenditure of considerable time and effort in the defense of this matter.

**e. O. Ames Co., B-283943, Denied.**

Two lessons were learned: First considerable ambiguity attended the participation of the protester in the competition. The company was afforded somewhat special status, as it did not submit a responsive proposal but was allowed to submit tool samples for comparison testing. Partly as a result, it may have believed that it was eligible for an award, when in fact, its tools were used as benchmarks only - examples of existing technology against which competitors were measured. In the future, contracting officers will be advised of the importance of clear delineating of responsive vs. non-responsive proposals, and putative offerors will be promptly advised of the consequences of failure to submit complete information in response to a solicitation.

The second lesson is somewhat obtuse, and contained in dicta within the decision. The Berry Amendment, 10 U.S.C. § 2241 note, prohibits the acquisition of hand tools from other than domestic source requirement somewhat, and this decision adds further perspective. According to the decision, a tool assembled in the United States of components manufactured abroad would comply with the amendment. While this reasoning does not extend to other commodities covered by the amendment (chiefly textile products), it does provide some relief to agencies that routinely acquire hand or measuring tools.

**USACE Lessons Learned:**

**a. Valenzuela Engineering, Inc., B-283889, Denied.**

Protest of award under a request for proposals issued for operation and maintenance of groundwater treatment centers at the Los Alamitos Air Force Reserve Center. GAO denied the protest holding that USACE's selection of a technically superior, higher-priced proposal is unobjectionable where the solicitation made technical considerations more important than price and the agency reasonably concluded that the technical superiority of the awardee warranted payment of the associated price premium. This protest is a showcase for how best value procurements should be executed.

**b. Encorp-Samcrete J/V, B-284171, 284171.2, Denied.**

The decision by USACE to reject as unacceptable protester's proposal on a project to construct a stock control administration facility for F-16 aircraft in El Bassateen, Egypt, was held unobjectionable where the proposal's project schedule failed to address demobilization. Under the circumstances, the GAO found it reasonable for the SSA to find the proposal unacceptable because the RFP contemplated demobilization as one of the "major phases of work." The GAO concluded that evaluation of technical proposals is a matter within the discretion of the contracting agency. The lesson learned here is that in reviewing and evaluation, GAO's focus will be to ensure the evaluation was reasonable and consistent with the solicitation's stated evaluation criteria.

**c. Ocuto Blacktop & Paving Co., Inc., B-284165, Sustained.**

Ocuto protested award of a contract by USACE for the capping of a landfill at the former Griffis Air Force Base. The GAO upheld Ocuto's contention that the use of preplaced, regional IDIQ contracts for environmental remediation at closed or realigned military installations violates a statutory requirement to

provide a preference, to the greatest extent practicable, for such work to businesses located in the vicinity of such installations. The records failed to show that USACE gave reasonable consideration to the practicability of the statutory preference before awarding such contracts. The GAO further held that the solicitation did not give sufficient notice to potential offerors that environmental remediation projects for military installations which were closed or realigned as part of the base realignment and closure process were included within the solicitation. The key lesson in this case is that the statutory limitation on GAO's bid protest jurisdiction over challenges to the award of a task order under an IDIQ contract does not apply where the protesters essentially challenge the propriety of the solicitation for the underlying IDIQ contract.

#### **Other DA Lessons Learned:**

##### **a. Ramada Inn, B-284703; b-284703.2 and Sun-N-Sand Motel, b-284717, Withdrawn.**

The Agency properly cancelled a solicitation to provide meals and lodging to applicants processing at the Jackson, Mississippi, and the Jacksonville, Florida, Military Entrance Processing Stations. Protester alleged that the agency's failure to issue the procurement, as a small business set-aside was unreasonable and an abuse of discretion. The protester requested that the solicitation be cancelled and re-issued as a small business set-aside. The agency cancelled the solicitation to conduct further market research to see whether there were two responsible small business concerns that would submit offers for the procurement.

Lesson Learned: GAO will not overturn an agency's determination to cancel a solicitation to conduct further market research to see whether a procurement is suitable as a small business set-aside.

##### **b. Quality Hotel & Conference Center, B-284438, Withdrawn.**

This solicitation was to provide meals and lodging to applicants processing into a Military Entrance Processing Station. The protest challenged the inclusion of a sealed-bid award clause in a best-value procurement.

Lesson Learned: The Contracting Officer corrected the mistake and the protest was withdrawn. The lesson learned is to ensure the correct clauses are contained in a solicitation.

##### **c. Central Texas College, b-284705, Dismissed as academic.**

This solicitation was for the Army's Continuing Education Services. The protester argues that the contracting officer should have determined that RCI's unit price "would not support wage determinations and salary benefits" required by the Service Contract Act. GAO dismissed the protest as untimely.

Lesson Learned: Untimely protests will not be entertained by GAO.

##### **d. Washington-Harris Group, Inc., B-284266, Dismissed as academic.**

This solicitation was for Early Intervention Services for infants. The protester alleged that the agency failed to follow its stated evaluation criteria in evaluating awardee's technical proposal. The agency determined that it erred in not applying the requirements stated in Section L of the solicitation to the evaluation process. Specifically the agency found the awardee to be technically superior to the protester even though the awardee had never provided these highly specialized services before, and even though the awardee's proposed management personnel lacked technical qualifications. Accordingly, the agency took correct action to re-do the evaluation.

Lesson Learned: Ensure that sources factors in Section L of the solicitation match with the elements of the source selection plan. Ensure evaluators are informed of the evaluation factors and the rating scheme.

# GAO PROTESTS FILED BY MAJOR COMMANDS (HCAs)

	2Q00	1Q00	2Q99
<b>AMC TOTAL</b>	<b>14</b>	<b>21</b>	<b>14</b>
ACLAL	0	0	0
ANDA	0	1	0
ARDEC	1	0	0
ARL	0	0	0
ATCOM	0	0	0
AMCOM	4	2	2
AMCOM (AATD)	0	0	0
BELVOIR	1	2	0
BGAD	0	1	0
CACWOO	0	0	1
CCAD	0	0	0
CBDCOM	0	0	0
CECOM	2	0	0
DESCOM-Letterkenny	0	0	0
DPG	0	0	0
IOC	0	2	3
LEAD	0	0	0
MCALESTER	0	0	0
MICOM	0	0	0
NATICK	0	0	0
PBA	0	0	0
RMA	0	0	0
RRAD	0	0	0
SBCCOM	1	1	4
SSCOM	0	0	0
TACOM	4	9	3
TECOM	0	1	0
TECOM-OPTEC	0	0	0
TECOM-Dugway	0	0	0
TECOM-Yuma Proving Grou	0	0	0
USMA	0	2	0
VHFS	0	0	0
WSMR	1	0	0
WVA	0	0	1
YPG	0	0	0

	2Q00	1Q00	2Q99
<b>USACE TOTAL</b>	<b>19</b>	<b>21</b>	<b>18</b>
<b>U.S. Army Engineer District</b>			
Alaska	0	0	0
Baltimore	2	0	0
Buffalo	0	0	0
Charleston	0	1	0
Chicago	0	0	0
Detroit	0	0	1
Europe	1	0	0
Fort Worth	6	0	0
Galveston	0	0	0
Humphreys Eng. Center	1	0	0
Huntington	0	0	0
Huntsville	0	2	1
Jacksonville	0	0	1
Japan	0	0	0
Kansas City	1	0	0
Little Rock	0	0	1
Los Angeles	0	0	0
Louisville	1	1	2
Memphis	1	0	0
Mobile	2	2	0
Nashville	0	0	0
New England	0	0	0
New York	1	1	3
New Orleans	0	3	4
Norfolk	0	4	0
Omaha	0	0	0
Pacific Ocean Division	0	0	0
Philadelphia	0	0	0
Pittsburgh	0	0	0
Portland	0	1	1
Rock Island	0	0	0
Sacramento	1	1	1
Savannah	0	1	1
Seattle	0	0	0
St. Louis	0	0	0
St. Paul	0	1	0
Transatlantic	0	0	1
Transatlantic (Europe)	2	0	0
Tulsa	0	2	0
Vicksburg	0	0	1
Walla Walla	0	0	0
Waterways Exp. Station	0	0	0
Wilmington District	0	1	0



<b>DA OTHER TOTAL</b>	<b>2Q00 20</b>	<b>1Q00 23</b>	<b>2Q99 16</b>
Defense Supply Service - W	1	1	0
HQ Military Traffic Mgmt Cmr	0	2	1
Mil District of Wash	1	0	1
MEDCOM	0	4	1
National Guard Bureau	1	3	0
Ofc Dep Cdr for Health Care	0	0	0
USA Contracting Sys Cmd	0	0	2
USA Force Command	5	7	4
USA Information Sys Cmd	0	0	0
USA Intel & Security Cmd	0	0	0
USA Medical Res. & Mat Cmr	3	0	3
USA Pacific	1	0	0
USA South	0	0	0
USASDC	0	0	0
USA Space & Missel Def Crr	0	0	0
USA TRADOC	8	6	4
8th USA - Korea	0	0	0
USSOC	0	0	0
USACFSC	0	0	0
USAREUR	0	0	0

**QUARTERLY REPORT FOR AGENCY LEVEL PROTESTS  
FOR THE PERIOD JANUARY 1 THROUGH MARCH 31, 2000 (2Q2000)**

1. Number of protests filed:

	<b>2Q00</b>	<b>1Q00</b>	<b>2Q99</b>
<b>TOTAL</b>	<b>24</b>	<b>16</b>	<b>9</b>
o AMC	10	0	3
o USACE	14	14	2
o DA Other	0	2	4

Please refer to listing of protests by MACOM at end of this report.

2. Number of protests sustained/granted:

	<b>2Q00</b>	<b>1Q00</b>	<b>2Q99</b>
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>1</b>
o AMC	0	0	0
o USACE	0	0	0
o DA Other	0	0	1

3. Costs:

a. Costs and fees awarded by GAO to protester:

	<b>2Q00</b>	<b>1Q00</b>	<b>2Q99</b>
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>
o AMC	0	0	0
o USACE	0	0	0
o DA Other	0	0	0

b. Estimated preaward value of requirement or postaward contract cost/price:

(1) Preaward protests (estimated value of requirement):

	<b>2Q00</b>	<b>1Q00</b>	<b>2Q99</b>
<b>TOTAL</b>	<b>\$85,104,889</b>	<b>\$114,435,031</b>	<b>\$0</b>
o AMC	\$79,381,802	\$108,650,000	\$0
o USACE	\$5,723,087	\$4,951,931	\$0
o DA Other	\$0	\$833,100	\$0

(2) Postaward protests (contract cost/price):

	2Q00	1Q00	2Q99
<b>TOTAL</b>	<b>\$1,181,570,066</b>	<b>\$47,641,372</b>	<b>\$391,561,773</b>
o AMC	\$1,175,690,580	\$11,700,000	\$390,946,550
o USACE	\$5,879,486	\$35,702,722	\$14,800
o DA Other	\$0	\$238,650	\$600,423

c. Total government personnel costs resulting from protests:

	2Q00	1Q00	2Q99
<b>TOTAL</b>	<b>\$63,775</b>	<b>\$56,761</b>	<b>\$45,134</b>
o AMC	\$32,025	\$21,055	\$39,032
o USACE	\$31,750	\$35,706	\$902
o DA Other	\$0	\$0	\$5,200

4. Lesson learn, issues, and trends:

**AMC Lessons Learned:**

**a. Professional Machine Service, 0090200, Denied.**

The importance of documenting the contract file with respect to telephone conversations, email correspondence, and rationale for various actions taken in the course of procurement. In this case, the contract file was very well documented and made our response to the protest much easier.

**b. AMTEC Corporation, 00100300, Dismissed.**

Solicitation should specifically state: "Government requirements for hours under Level-of-Effort Contracts are for productive hours, only, and exclude all nonproductive hours for sick leave, vacation, or other personal leave."

**c. Diving Unlimited Incorporated, 0011099. Closed.**

The protest reinforces the importance of appearance, and highlights the problems associated with technical evaluation conducted by outside personnel. The protester believed that one of the technical evaluator had an undisclosed personal relationship with the president of the successful offeror. Investigation of the allegation pursuant to the protest revealed that the two had attended high school in the same area (although at different times) and had apparently been introduced as "high school buddies" at a trade show. Although the technical evaluation had been observed by acquisition personnel and involved other technical evaluators as well, the protester believed that this particular evaluator was in a position to skew the underwater test results. Although Soldier Systems Center personnel and visiting technical evaluators are advised of

procurement integrity matters prior to source selection, this protest provides another example of the need for evaluators to disclose potential conflicts after proposals are received.

**d. Motorola Incorporated, 0041199, Dismissed.**

Contracting, Legal, and Program personnel must use the 10 U.S.C. § 2304 (c) (2) justification for full and open competition sparingly and judiciously. In an urgency J&A, agencies must fully document the specific rational for use of exemption.

**USACE Lessons Learned:** No significant information to report.

**Other DA Lessons Learned:** No significant information to report.

	2Q00	1Q00	2Q99
<b>AMC TOTAL</b>	<b>10</b>	<b>6</b>	<b>3</b>
ACLAL	0	0	1
ANDA	0	0	0
ARDEC	0	0	1
ARL	0	0	0
ATCOM	0	0	0
AMCOM	1	1	0
AMCOM (AATD)	0	0	0
BGAD	0	0	0
CACWOO	0	0	1
CCAD	0	0	0
CBDCOM	0	0	0
CECOM	5	2	0
DESCOM-Letterkenny	0	0	0
DPG	0	0	0
IOC	0	0	0
LEAD	0	0	0
MCALESTER	0	0	0
MICOM	0	0	0
NATICK	0	0	0
PBA	0	0	0
RMA	0	0	0
RRAD	0	0	0
SBCCOM	1	1	0
SSCOM	0	0	0
PM SANG - Saudi	1	1	0
TACOM	2	1	0
TECOM	0	0	0
USMA	0	0	0
WSMR	0	0	0
WVA	0	0	0
YPG	0	0	0

	2Q00	1Q00	2Q99
<b>USACE TOTAL</b>	<b>14</b>	<b>14</b>	<b>2</b>
<b>U.S. Army Engineer District</b>			
Alaska	1	0	1
Baltimore	0	1	0
Buffalo	0	0	0
Charleston	1	0	0
Chicago	0	0	0
Detroit	0	0	0
Europe	2	1	0
Fort Worth	1	0	0
Galveston	1	0	0
Humphreys Eng. Center	0	1	1
Huntington	0	0	0
Huntsville	0	0	0
Jacksonville	1	0	0
Japan	0	0	0
Kansas City	0	1	0
Little Rock	0	0	0
Los Angeles	0	0	0
Louisville	0	0	0
Memphis	0	0	0
Mobile	0	0	0
Nashville	0	0	0
New England	0	0	0
New York	1	1	0
New Orleans	3	0	0
Norfolk	1	1	0
Omaha	0	1	0
Pacific Ocean Division	0	0	0
Philadelphia	0	1	0
Pittsburgh	0	0	0
Portland	0	1	0
Rock Island	0	0	0
Sacramento	1	1	0
Savannah	0	2	0
Seattle	1	1	0
St. Louis	0	0	0
St. Paul	0	0	0
Transatlantic	0	1	0
Transatlantic (Europe)	0	0	0
Tulsa	0	0	0
Vicksburg	0	0	0
Walla Walla	0	0	0
Waterways Exp. Station	0	0	0

	2Q00	1Q00	2Q99
DA OTHER TOTAL	0	2	4
Defense Supply Service - Wash	0	1	2
HQ Military Traffic Mgmt Cmd	0	1	0
Mil District of Wash	0	0	0
MEDCOM	0	0	0
National Guard Bureau	0	0	0
Ofc Dep Cdr for Health Care	0	0	0
USA Contracting Sys Cmd	0	0	0
USA Force Command	0	0	1
USA Information Sys Cmd	0	0	0
USA Intel & Security Cmd	0	0	0
USA Medical Res. & Mat Cmd	0	0	0
USA Pacific	0	0	0
USA South	0	0	0
USASDC	0	0	0
USA Space & Missel Def Cmd	0	0	0
USA TRADOC	0	0	1
8th USA - Korea	0	0	0
USSOC	0	0	0
USACFSC	0	0	0